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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 ROBERT H. ODELL, JR., et al,

8 Plaintiffs,

9 v.

10 ALEX M. AZAR II, SECRETARY OF
11 HELTH AND HUMAN SERVICES, et al.,

12 Defendants.

Case No. 2:15-cv-01793-RFB-EJY

ORDER

13 Before the Court is Plaintiff's Motion for Re-Hearing (ECF No. 126) and Defendants'
14 Motion to File Corrected Opposition (ECF No. 135). For the reasons below, the Court denies
15 Plaintiffs' Motion for Re-Hearing and grants Defendants' Motion to File Corrected Opposition.

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17 **I. BACKGROUND**

18 Plaintiffs filed the Complaint on September 18, 2015. ECF No. 1. At a hearing on August
19 4, 2016, the Court gave Plaintiffs leave to file an amended complaint. ECF No. 53. Plaintiffs filed
20 the operative Amended Complaint on September 9, 2016. ECF No. 57.

21 On February 16, 2018, Plaintiffs filed a Motion for Preliminary Injunction. ECF No. 104.
22 Defendants responded and Plaintiffs replied. ECF Nos. 106, 107. After holding a hearing on July
23 17, 2018, the Court granted the Motion for Preliminary Injunction in a September 26, 2018 order.
24 ECF No. 112. The Court permitted the parties to submit proposed orders regarding the appropriate
25 scope of injunctive relief. ECF No. 112. Each party filed a proposed order. ECF Nos. 114, 116.
26 Each party then filed an additional memorandum responding to the other party's proposal. ECF
27 Nos. 118, 119. The Court held a hearing on October 26, 2018 and ordered the parties to submit a
joint proposed final order. ECF No. 120. The parties submitted a proposed order with additional

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1 briefing regarding contested terms. ECF Nos. 121, 122, 123. The Court then issued the scope of
2 its relief on December 17, 2018. ECF No. 125.

3 On January 8, 2019, Plaintiffs filed the instant Motion for Re-Hearing. ECF No. 126.
4 Defendants responded on February 26, 2019 and filed the instant Motion to File Corrected
5 Opposition on February 27, 2019. ECF Nos. 134, 135. Plaintiffs replied on March 1, 2019. ECF
6 No. 136.

7 **II. LEGAL STANDARD**

8 The Court construes Plaintiffs' motion for re-hearing as a motion to reconsider. "As long
9 as a district court has jurisdiction over the case, then it possesses the inherent procedural power to
10 reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient." City of
11 Los Angeles, Harbor Div. v. Santa Monica Baykeeper, 254 F.3d 882, 885 (9th Cir. 2001) (citation
12 omitted) (internal quotation marks omitted). "Whether or not to grant reconsideration is
13 committed to the sound discretion of the court." Navajo Nation v. Confederated Tribes and Bands
14 of the Yakama Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003). However, "a motion for
15 reconsideration should not be granted, absent highly unusual circumstances, unless the district
16 court is presented with newly discovered evidence, committed clear error, or if there is an
17 intervening change in the controlling law." Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH
18 & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotation and citation omitted). A motion for
19 reconsideration "may *not* be used to raise arguments or present evidence for the first time when
20 they could reasonably have been raised earlier in the litigation." Id. (internal quotation and citation
21 omitted). Moreover, "[m]otions for reconsideration are disfavored. A movant must not repeat
22 arguments already presented unless (and only to the extent) necessary to explain controlling,
23 intervening law or to argue new facts. A movant who repeats arguments will be subject to
24 appropriate sanctions." LR 59-1.

25 **III. DISCUSSION**

26 As an initial matter, the Court grants Defendants leave to file their revised opposition.
27 Defendants filed the revised response only one day after the previously filed response, and
28 Plaintiffs do not oppose the filing. The revised opposition does not prejudice Plaintiffs and
contains only minor revisions.

1 In their motion to reconsider, Plaintiffs argue that the Court's preliminary injunction order
2 places Plaintiffs in a status of constant audit by Defendants. They argue that the Court's imposition
3 of LCD 355456 upon Plaintiffs is contrary to the Social Security Act and contrary to the relief
4 Plaintiffs requested from this Court. Plaintiffs request that the Court revise its December 17, 2018
5 Order by removing paragraphs 3, 4, and 5.

6 Defendants respond that Plaintiffs provide no newly discovered evidence, intervening law,
7 or other unusual circumstances meriting reconsideration. The Court agrees. Plaintiffs' arguments
8 are no different than the arguments Plaintiffs proffered in advance of the Court's determination.
9 In determining the nature and scope of its injunction, the Court weighed the Plaintiffs' motion at
10 ECF No. 04, reply at ECF No. 107, proposed order at ECF No. 114, memorandum at ECF No.
11 119, and memorandum at ECF No. 123, in addition to Plaintiffs' oral argument at hearings held
12 on July 17, 2018 and October 26, 2018. The Court has fully considered Plaintiffs' arguments.
13 Plaintiffs do not proffer, and the Court does not find, any circumstances meriting reconsideration.

14 **IV. CONCLUSION**

15 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Re-Hearing (ECF No. 126) is
16 DENIED and that Defendants' Motion to File Corrected Opposition (ECF No. 135) is GRANTED.

17 **DATED:** September 6, 2019.



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20 **RICHARD F. BOULWARE, II**
21 **UNITED STATES DISTRICT JUDGE**
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